

The Aspen Pitkin County Housing Authority

An Affordable Workforce
Housing Program

BY BETHANY SPITZ

This third article in the Affordable Housing Series looks at the Aspen Pitkin County Housing Authority's affordable workforce housing program.

The City of Aspen and Pitkin County manage an affordable workforce housing program for qualified employees within their jurisdiction. This article discusses the housing program's formation and management.

The Aspen Pitkin County Housing Authority

The Aspen Pitkin County Housing Authority (APCHA) was created in 1982, when the City of Aspen (the City) and Pitkin County (the County) signed an Inter-Governmental Agreement (IGA) in accordance with the Colorado Constitution and the Colorado Revised Statutes.¹ Previously, the City and the County had operated separate housing programs to meet the acute need to provide affordable housing for resident employees living in their high-cost resort communities. Under applicable CRS provisions and the IGA, APCHA was instituted as a separate multijurisdictional governmental entity with powers to, among other things, acquire and dispose of property; plan, construct, and manage affordable workforce housing; make contracts; hire employees; and raise revenues to fund the program.

APCHA is governed by a five-member Board of Directors (the Housing Board) appointed by the Aspen City Council (the Council) and the Board of County Commissioners of Pitkin County (the BOCC). The Housing Board establishes affordable housing policies, including compliance and enforcement. An executive director and staff manage and operate APCHA in accordance with the City of Aspen Land Use Regulations, the Pitkin County Land Use Code, and APCHA's Employee Housing Guidelines (Housing Guidelines),² which are updated regularly.

APCHA's mission is to provide affordable workforce housing for the community and local economy. APCHA manages the largest resort-based deed-restricted inventory in North

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America relative to population, with over 3,000 deed-restricted units, including ownership and rentals.

APCHA's governing principles aim to ensure the program can operate into the future. The governing principles are to:

- provide affordable housing opportunities to full-time permanent working residents who provide or have provided goods and services to individuals, businesses, or institutional operations within Aspen and Pitkin County;
- provide housing opportunities for full-time seasonal workers;
- promote the development and maintenance of housing that is affordable to a cross section of socio-economic sectors;
- promote program transparency and improved decision making through accurate, reliable, valid real-time data;
- strive for 100% program compliance by enforcing the Housing Guidelines and all deed restrictions;
- demonstrate program value to the community and taxpayers; and
- safeguard the housing program for future generations to come.

IGA Historical Overview

Since the program's inception in the early 1980s, APCHA's IGA has undergone six changes aimed at addressing the evolving needs and challenges of the housing program. The IGA now operates under its sixth revision, which was renegotiated in May 2019.³ The latest amendments are focused on four areas:

- 1. Housing Board composition.** The Board originally comprised seven directors—three appointed by the Council, three appointed by the BOCC, and one jointly appointed, with one director from the BOCC and one from the Council. The third IGA changed the composition of the Housing Board to five directors, but none

of those directors could be a Council or BOCC member. The fifth IGA increased the number of directors on the Housing Board back to seven, plus one alternate. The sixth IGA, adopted in 2019, reduced the number of voting directors back to five, plus three alternates. The current board comprises one voting county commissioner, one alternate county commissioner, one voting councilperson, one alternate councilperson, and three voting citizens appointed jointly by Aspen and Pitkin County, plus one citizen alternate.

2. Term limits. The term limits were changed in the third version of the IGA from two years to four years for all members. The newly revised IGA limits terms for all directors to two consecutive four-year terms.

3. Reporting structure. The first and second IGAs provided that the executive director was to be appointed by the Housing Board. The third IGA changed the executive director's reporting structure by requiring him or her to report directly to the City Manager. Under the current IGA, the executive director and staff are employees of the City of Aspen and follow all City personnel policies.

4. Power of the Authority. Under previous versions of the IGA, the Board made policy recommendations to the Council and the BOCC. Using a call-up procedure, the Board would forward any policy recommendations (resolutions) to the Council and the BOCC for review. The Council and the BOCC then had the option to call up the resolution within 60 days to discuss and approve it, with or without changes. If a call-up was not requested by either jurisdiction within 60 days, the recommendations would be adopted and incorporated into the Housing Guidelines. However, under the sixth IGA, the call-up procedure was eliminated, which gives the Board final authority on all policy matters.

Program Oversight

In addition to the IGA, the City and County's affordable housing development is enabled by

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state law;⁴ City of Aspen Land Use Regulations (Municipal Code Title 26); and the Pitkin County Land Use Code (Title 8). APCHA's deed restrictions and the Housing Guidelines govern the program's specific qualifications and operations.

Deed-Restriction Policies

APCHA's workforce housing is deed-restricted housing for qualified employees. At a minimum,

employees are required to (1) prove permanent residency (i.e., they must reside in the unit a minimum of nine months a year); (2) work in Pitkin County at least 1,500 hours per calendar year; and (3) own no other developed residential property in the Ownership Exclusion Zone (OEZ).⁵ APCHA's standard deed restriction (Appendix) applies the Housing Guidelines to specific properties. The provisions of the deed restriction have evolved over time.

A current deed restriction is placed on most affordable ownership properties at resale. At closing, the buyer and APCHA sign the deed restriction, which is then filed with the Pitkin County Clerk and Recorder. The deed restriction outlines the requirements that both parties agree to follow and the consequences for failing to comply with those requirements. In most cases the deed restriction requires APCHA to act as the transaction broker for future sales of deed-restricted units.

APCHA rental and ownership housing is primarily developed by the City and County but managed by APCHA according to the Housing Guidelines. APCHA oversees approximately 1,400 rental units. Of these, APCHA privately manages about 400 units, with the remaining managed by private interests. The majority of deed-restricted ownership units are sold through APCHA and managed by nonprofit homeowners' associations (HOAs), depending on the property. Each HOA is responsible for maintaining common elements of the property with the power to assess owners as necessary. Prospective tenants and owners apply and qualify through APCHA. Once in the program, a tenant or owner will occupy the unit under the terms of their respective lease or HOA, and in compliance with the deed restriction and the Housing Guidelines.

APCHA also requires owners to pay their monthly assessments in compliance with the Colorado Common Interest Ownership Act's (CCIOA) responsible governance policies. The HOA must show compliance with CCIOA in each collection case.

APCHA Housing Guidelines

The Housing Guidelines are the rules and regulations for APCHA, the homeowners, and

tenants. They work in tandem with the deed restrictions to provide the requirements for each party.

The Housing Guidelines have been regularly amended since 1982 to match the changing times and needs of the program. The APCHA executive director reviews the Housing Guidelines annually to propose policy changes to the Housing Board. The Housing Board then solicits public comment through a public hearing process before approving any amendments by resolution.

Affordable Housing Funding

Workforce housing in the City of Aspen and Pitkin County is supported by funding from the City, the County, and APCHA. Revenues come from a variety of sources, including customer fees. Generally, two-thirds of APCHA's annual revenues are generated by fees, while one-third is covered by an operational subsidy, which is split 50/50 by the City and County. The City and County also require private sector developers to mitigate the relative impact of development through various fees (e.g., in-lieu fees and impact fees). These fees are often used to build new affordable workforce housing.

The City also maintains a Housing Development Fund dedicated to workforce housing, which has several sources of funding within the City of Aspen:

- A housing real estate transfer tax (RETT) of 1% is charged on the sale price of private real property sold within the City of Aspen, but the first \$100,000 of value is exempted. The housing RETT has been renewed by referendum three times, most recently in 2001, and will remain in effect until December 31, 2040.⁶
- A portion of the city sales tax is dedicated to housing. Affordable housing and day care programs currently share .45% of the city sales tax as determined by the Council.⁷
- Fee-in-lieu and impact fees may be charged to private sector developers who do not construct or convert affordable housing as part of development projects. Fees are calculated according to a formula based on City and County land use regulations and codes.⁸

- Land-in-lieu, or a conveyance of vacant property to the City or APCHA, may mitigate private sector property development requirements. Such conveyances afford APCHA and the City the opportunity to acquire real property that, if not appropriate for affordable housing development, may be sold to fund the housing program.⁹
- Under the City of Aspen's Credit Certificate Program, a private sector developer may mitigate affordable housing requirements by purchasing a credit equivalent to the free market value of an affordable housing unit located in an "all-affordable" housing project.¹⁰

Pitkin County maintains a fund dedicated to providing affordable housing. The Employee Housing Impact Fee was created under BOCC Ordinance No. 23-2005, which amended portions of the Pitkin County Land Use Code. The purpose of the Employee Housing Impact Fee, known as payment-in-lieu, is to require the applicable development to pay to mitigate the impacts of development and land use to the employee housing stock managed or controlled by Pitkin County or APCHA, its housing designee. Fees are calculated according to a formula based on the County's land use regulations and codes.

Finally, APCHA charges various fees and maintains an operating fund. Fees are charged for applications, bid submissions, requalifications, and other administrative services. Sellers of deed restricted ownership units are also charged listing and transaction fees, generally equaling 2% of the sales price.

Enforcing Program Requirements

In 2018, APCHA hired its first full-time compliance manager to provide oversight of its 3,000 deed-restricted units. The compliance manager's role is to build organizational consistency and programmatic integrity. The position is structured to focus equally on enforcement and providing education about the Housing Guidelines and deed restrictions.

Because APCHA provides subsidized housing in a tight and expensive real estate market, it takes compliance complaints very seriously, in balance with due process for participants.

The most challenging aspect of enforcing the Housing Guidelines and deed restrictions is that they can vary from property to property, because the lack of programmatic standardization over the first 20 years of the program created different rules for homeowners. To counter this, APCHA has worked to standardize deed restrictions and tie them to the most up-to-date Housing Guidelines.

In any event, each deed restriction must be reviewed in its entirety to determine its particular requirements and whether it cites a specific set of previously adopted Housing Guidelines. If it does, APCHA must use and adhere to the rules and requirements listed in that version of the Housing Guidelines. If not, APCHA uses the current adopted version of Housing Guidelines.

Because most deed restrictions vary, including some that cite previous Housing Guidelines, there is sometimes a perception of inequality or unfair treatment among program participants. But APCHA must follow the requirements of the documents attached to specific properties and individuals, so it endeavors to educate program participants about their particular housing responsibilities.

APCHA relies on the public to help with its compliance efforts because it cannot be everywhere at once, and like any organization, it has budgetary constraints and human resource limitations. APCHA receives complaints online, and through emails, phone calls, and walk-ins. Complaints can be anonymous, but APCHA prefers names attached to complaints, since anonymous complaints are more difficult to prove. While APCHA understands the public's reluctance to provide their identity when submitting a complaint (because each complaint is a public record), it is much harder for it to prove a case of "he said, she said" without an eye-witness. Also, cases are much stronger when staff can work with the complainant during the investigation.

Program Participant Compliance

APCHA collects a biennial affidavit from all owners ensuring that they (1) are working at least 1,500 hours in Pitkin County per calendar year, (2) have continued to reside in their unit

for at least nine months of the year, and (3) do not own other developed residential property in the OEZ. Additionally, APCA issues random audits each year to request more detailed information from households, including tax returns and documents such as W2s/1099s. Occupants of affordable housing consent to provide such supporting documentation to establish continued eligibility as a condition of their deed restriction.

Currently, APCA uses three distinct processes to enforce or provide waivers to the deed restrictions and the Housing Guidelines:

1. **Compliance cases.** These are initiated by an APCA investigation or a complaint (anonymous or not) from a third party.
2. **Special reviews.** These occur when a program participant seeks an exception to the strict application of the Guidelines. The requestor must show an unusual

hardship and that the variance requested is consistent with the housing program's intent and policies.

3. **Grievances.** A grievance is any dispute, claim, or request a person may have with APCA that does not arise from a notice of violation. Grievances must be submitted to APCA staff first. Staff attempts to resolve the issue and if it cannot, the claim is forwarded to the APCA Board or Hearing Officer.

APCHA rental occupants are held to the same basic eligibility standards as APCA owners. The primary difference is that APCA renters are required to requalify for their unit every two years because they must continue to meet income and asset requirements. If they do not meet income and asset requirements, APCA gives them one year to return to compliance or move out of their unit.

Complaint Process

APCHA receives about 100 complaints from the public annually alleging non-compliance by program participants. APCA investigates each complaint and uses investigative tools to help determine if complaints are legitimate. The information that APCA looks at includes individuals' driver's licenses, property records, and utility records. It also conducts site visits of property owners, giving them at least 24-hours' notice. Site visits help establish not only occupancy of a unit, but whether a unit is inhabited by an eligible working household.

APCHA investigates complaints of APCA tenants the same way as it does owners.

If further investigation is warranted after a public records search, APCA issues a Notice of Investigation to owners or renters who are believed to be out of compliance. The Notice of Investigation allows owners or renters 15 days to provide specific information such as W2 forms, tax returns, profit and loss statements, and credit card records. Most investigations are resolved during the investigatory stage, when the household can show compliance or when APCA can establish no violation.

If APCA does not receive documentation to show compliance, or if the information received is insufficient to show compliance, APCA issues a Notice of Violation. The Notice of Violation provides a 15-day period for owners to provide evidence to prove compliance, list their home for sale, or request a hearing to contest the Notice of Violation. APCA occasionally issues a Notice of Violation without first sending a Notice of Investigation when it already has enough evidence to prove non-compliance.

If the individual requests a hearing, APCA provides a memo to the Housing Board outlining the facts, the relevant provisions of the deed restrictions and the Housing Guidelines, and a recommended motion at least 24 hours before the hearing. Alleged compliance violators are asked to provide all documentation and relevant material they want to present to the Housing Board at least seven days before the hearing. During the hearing, APCA staff presents its case, followed by a question and answer period by the Housing Board. Then the appellant presents his or her case, followed by another question

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and answer period. The public is also allowed to provide comment. The Housing Board then discusses staff's recommendation and makes a motion. If the motion passes by a majority of the directors, a resolution is prepared and signed. It is a quasi-judicial process, and the Housing Board's decision can only be appealed to the Pitkin County District Court. If the individual does not comply with the Housing Board's decision, staff typically turns the matter over to outside counsel for further enforcement.

If someone does not respond to a Notice of Violation within 15 days by either requesting a hearing or curing the violation, the Housing Board's decision is considered final. The failure to request a hearing constitutes the failure to exhaust administrative remedies for the purpose of judicial review. The matter is then turned over to outside counsel. This usually involves taking an owner or renter to court to enforce the Housing Board's decision.

APCHA receives many complaints that are not violations of the deed restriction. These complaints are tracked but not pursued. The most common complaint, for example, is associated with minimum occupancy concerns. When

applying for affordable housing, applicants must meet minimum occupancy requirements. Renters must maintain minimum occupancy throughout their lease; however, owners are not required to maintain minimum occupancy (e.g., one person per bedroom) as life circumstances and household sizes change due to circumstances such as a divorce, death of a spouse, or a child leaving for college.

Another common alleged violation is that an individual or household makes too much money to reside in affordable housing. APCHA does not penalize someone for receiving a promotion at work or taking a new job opportunity. Once an owner qualifies based on his or her income and assets at the time of move-in (see the chart below), APCHA's only concern is that the owner continues to work in Pitkin County and complies with other requirements of the deed restriction and the Housing Guidelines. Income and assets can change throughout the course of ownership. APCHA housing was originally designed to be a stepping stone to move into free market housing. But that can be difficult in Aspen's current real estate market, which lacks adequate inventory at all price points.

In recent years, APCHA has seen an increase in the number of compliance cases involving an individual who gets married after purchasing an affordable housing unit. Based on initial and ongoing eligibility standards, the deed-restricted owner must not own other developed residential property in APCHA's OEZ. But if the owner marries someone who owns developed residential property, either free market or deed restricted, they must sell either the deed restricted home or the free market home, because under the Housing Guidelines, a household includes all individuals occupying a unit regardless of legal or marital status. This includes married couples, regardless of whether or not they live in the affordable housing together.

In general, deed-restricted owners are prohibited from purchasing developed residential property in the OEZ unless they plan to relinquish their affordable housing unit. If deed-restricted owners are found to own other developed residential property in the OEZ, they are required to sell either their deed-restricted property or their free market property. If a deed restricted owner purchases another property (again, either deed restricted or free market)

2019 Category Income Limits and Asset Caps (as of June 1, 2019)

Household Size	Category 1 (50% AMI*)	Category 2 (85% AMI)	Category 3 (130% AMI)	Category 4 (205% AMI)	Category 5 (240% AMI)	RO**
1 person	\$36,200	\$61,550	\$94,100	\$148,400	\$173,750	No income limit
2 person	\$41,400	\$70,350	\$107,550	\$169,600	\$198,550	No income limit
3 person	\$46,550	\$79,150	\$121,000	\$190,800	\$223,350	No income limit
4 person	\$51,700	\$87,900	\$134,450	\$212,000	\$248,200	No income limit
5 person	\$55,850	\$94,950	\$145,200	\$228,950	\$268,050	No income limit
6 person	\$60,000	\$102,000	\$155,950	\$245,900	\$287,900	No income limit
Net Assets not to Exceed	\$138,000	\$317,000	\$419,000	\$593,000	\$925,000	\$2,300,000

* AMI is annual area median income for Pitkin County.

**RO refers to resident occupied dwellings.

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The Resolution would strengthen APCHA’s compliance and enforcement tools, which are currently limited to either forcing the sale of a deed-restricted home or terminating a deed-restricted lease.

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worked. Individuals who are self-employed or who work for companies not based in Pitkin County must prove that the majority of their clients and business income are from Pitkin County. Self-employed individuals must provide invoices, profit and loss statements, detailed calendars showing hours worked, and client lists. APCHA recently has had to force the sale of several units due to owners not meeting the work requirements or residency requirements.


The affordable workforce housing program was not intended for owners to use their units as income-producing properties. Therefore, they may not rent their ownership units for more than cost and may only rent to qualified employees approved through APCHA before move-in. This ensures that individuals are full-time workers in Pitkin County.


Short-term rentals are strictly prohibited. In 2018, APCHA forced the sale of a unit because the owner rented the unit as a short-term rental. APCHA routinely monitors Craigslist.com, Airbnb.com, and Vrbo.com to make sure APCHA-governed units are not being advertised for rent.

The Housing Board recently approved Resolution #5 Series of 2018—Adopting Amendments to APCHA Guidelines Creating a Hearing Officer Position and a Schedule of Fines. This Resolution creates a fine structure for compliance violations and creates a hearing officer position within the Housing Board to hear cases. The Resolution would strengthen APCHA’s compliance and

enforcement tools, which are currently limited to either forcing the sale of a deed-restricted home or terminating a deed-restricted lease. Creation of the hearing officer position to handle compliance cases would allow the Housing Board to focus solely on policy matters. At first reading on February 19, 2019, the Aspen City Council gave the green light on the hearing officer position but requested more information and changes to the fine schedule.¹¹

Conclusion

APCHA’s affordable workforce housing program adds value to the Aspen Pitkin County community by providing housing to working households who would otherwise be unable to afford to live in or near Aspen. APCHA’s compliance and enforcement work is not easy, but APCHA Board and staff strive to promote programmatic integrity by holding owners and renters accountable to the Housing Guidelines and specific deed restrictions. 

 **Bethany Spitz** is the compliance manager for the Aspen Pitkin County Housing Authority. She focuses on programmatic compliance and the enforcement of deed restrictions and guidelines—bethany.spitz@cityofaspen.com.

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with APCHA’s knowledge, they have 180 days from the point of acquisition to sell their deed restricted affordable housing unit.

Most complaints APCHA receives concern individuals who do not meet the minimum work requirement or do not reside in their unit. As stated above, individuals are required to reside in the unit a minimum of nine months a year and work in Pitkin County a minimum of 1,500 hours a year. APCHA requires proof of residency through tax returns and checking and credit card statements to determine the locations of charges. Individuals employed by a Pitkin County business are required to provide W2s and a recent paystub to prove hours

NOTES

1. See Colo. Const. art. XIV, § 18 and CRS § 29-1-204.5.
2. <https://www.apcha.org/sitepages/pid4.php>.
3. See Governing Documents, APCHA, <https://www.apcha.org/201/Governing-Documents>.
4. CRS § 29-1-204.5.
5. Housing Guidelines at 27. The OEZ is the land area in which any developed residential property has an address within the Roaring Fork River Drainage situated in Eagle, Pitkin, Garfield, or Gunnison Counties, or within the Colorado River Drainage from Rifle to No Name. An APCHA owner or renter cannot own any other property within the OEZ.
6. Aspen Mun. Code Ch. 23.48, <https://www.cityofaspen.com/191/Municipal-Code>.
7. Aspen Ord. No. 81, Series of 1989. See Aspen Mun. Code § 23.32.060(c)(4), <https://www.cityofaspen.com/DocumentCenter/View/230/Title-23-Taxation-1-2-3-PDF>.
8. Aspen Mun. Code Ch. 26.470.
9. *Id.*
10. Aspen Mun. Code Ch. 26.540.
11. See https://www.aspendailynews.com/news/housing-hearing-officer-gets-green-light-from-city/article_5d636cb0-3593-11e9-89ec-6f7bf265e1e5.html.

APPENDIX

DEED RESTRICTION AGREEMENT FOR THE OCCUPANCY AND RESALE OF PROJECT NAME/ADDRESS

THIS DEED RESTRICTION AGREEMENT FOR THE OCCUPANCY AND RESALE OF PROJECT NAME/ADDRESS (the Agreement) is made and entered into this ____ day of _____ 2019, by OWNER'S NAMES/DECLARANT'S NAMES (Owner/Declarant), for the benefit of the parties and enforceable by the ASPEN/PITKIN COUNTY HOUSING AUTHORITY (the APCHA), a duly constituted multi-jurisdictional housing authority established pursuant to the FIFTH AMENDED AND RESTATED INTER-GOVERNMENTAL AGREEMENT by and between the City of Aspen, Colorado (the City) and Pitkin County, Colorado (the County), dated December 18, 2013 and recorded at Reception No. 607311 on January 15, 2014, of the records of the Pitkin County Clerk and Recorder's Office.

WITNESSETH:

WHEREAS, Owner/Declarant owns the real property described in Exhibit A attached hereto and incorporated herein. For purposes of this Agreement, the real property and all dwellings, appurtenances, improvements, and fixtures associated therewith shall hereinafter be referred to as the "Property" or "Unit" as the context requires.

WHEREAS, Owner/Declarant agrees to restrict the acquisition or transfer of the Property to "Qualified Buyers," as that term is defined in this Agreement, who fall within the Category __ income range established by the APCHA from time to time in its *Aspen/Pitkin Employee Housing Guidelines* (the Guidelines). In addition, the Owner/Declarant agrees that this Agreement shall constitute a resale agreement setting forth the maximum resale price for which the Property or the Units may be sold (Maximum Resale Price) and the terms and provisions controlling the resale of the Property or the Units. Finally, by this Agreement, Owner restricts the Property and the Units against use and occupancy inconsistent with this Agreement.

WHEREAS, an "Owner/Declarant" is the person or persons who owns the property at the time of this Agreement and who hereby adopts and enters into this Agreement with APCHA voluntarily.

WHEREAS, "Qualified Buyers" are natural persons meeting the income, residency, and all other qualifications set forth in the Guidelines, or its substitute, as adopted by the APCHA or its successor, and in effect at the time of the closing of the sale to the Qualified Buyer, and who must represent and agree pursuant to this Agreement to occupy the Property or Unit as their sole place of residence; not to engage in any business activity on the Property, other than that permitted in that zone district or by applicable ordinance; not to sell or otherwise transfer the Property or Unit for use in a trade or business; and to continue meeting the employment, residency, and other requirements as stated in this Agreement and in the Guidelines as amended from time to time. Qualified Buyers require the prior approval of APCHA.

WHEREAS, an Owner is a person or persons, approved by APCHA, who is/are a Qualified Buyer who acquires an ownership interest in the Property or Unit in compliance with the terms and provisions of this Agreement, it being understood that such person or persons shall be deemed an Owner hereunder only during the period of his, her, or their ownership interest in the Property or Unit and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions, and restrictions contained herein during such period.

WHEREAS, this document supersedes any previous deed restriction agreement for occupancy and resale associated with this Property or the Units.

WHEREAS, a "Unit" is the unit located at ADDRESS, Aspen, Colorado 81611, and further described in Exhibit A.

NOW, THEREFORE, for value received, the receipt and sufficiency of which are hereby acknowledged, Owner hereby represents, covenants, and agrees as follows:

USE AND OCCUPANCY

1. The use and occupancy of the Property or the Units shall henceforth be limited exclusively to housing for natural persons who meet the definition of Qualified Buyers and their families, and the other requirements of this Agreement and the Guidelines referred to above.

REQUIREMENTS

2. An Owner, in connection with the purchase of this Property or Unit, must: a) occupy the Unit or Property as his or her sole place of residence during the time that such Property or Unit is owned; b) not own, directly or indirectly through a legal entity, any interest alone or in conjunction with others, in any developed, residential property within the Ownership Exclusion Zone, or dwelling units in accordance with the limitations established by the Guidelines as amended from time to time; c) not engage in any business activity on or in such Property or Unit, other than permitted in that zone district or by applicable ordinance; d) sell or otherwise transfer such Property or Unit only in accordance with this Agreement and the Guidelines; e) not sell or otherwise transfer such Property or Unit for use in a trade or business; f) not encumber the Property or Unit with debt in any form that exceeds, at any time, the Maximum Resale Price of the Property or Unit as determined in accordance with paragraphs 10 and 11; g) not permit any use or occupancy of such Property or Unit except in compliance with this Agreement; h) continue to meet the residence and employment requirements of a Qualified Buyer established by the Guidelines as amended from time to time; i) continue to meet the other requirements of the applicable Guidelines as amended from time to time; and j) provide the APCHA with information in accordance with paragraph 5. Recertification of employment, residency, the continued non-ownership of other property, and compliance with the other requirements of this paragraph and this Agreement shall be required as stipulated in the Guidelines.

DEFAULT ON LOAN

3.
 - a. It shall be a breach of this Agreement for Owner to default in payments or other obligations due or to be performed under a promissory note secured by a deed of trust encumbering the Property or a Unit or to breach any of Owner's duties or obligations under said deed of trust. It shall also be a breach of this Agreement for Owner to default in the payment of real property taxes or obligations to the Homeowners' Association for general or special assessments. Owner must notify the APCHA, in writing, of any such default, including notification received from a lender, or its assigns, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust, as described herein, or of any breach of any of Owner's duties or obligations under said deed of trust, within five calendar days of Owner's notification from lender, or its assigns, or any other creditor specified herein, of said default or past due payments or breach.
 - b. Upon notification of a default as provided above, the APCHA may offer loan counseling or distressed loan services to the Owner, if any of these services are available, and is entitled to require the Owner to sell the Property or Unit to avoid the commencement of any foreclosure proceeding against the Unit.
 - c. Upon receipt of notice as provided in paragraphs 3a and 3b, the APCHA shall have the right, in its sole discretion, to cure the default or any portion thereof. In such event, the Owner shall be personally liable to APCHA for past due payments made by the APCHA together with interest thereon at the rate specified in the promissory note secured by the first deed of trust, plus 1%, and all actual expenses of the APCHA incurred in curing the default. The Owner shall be required by APCHA to execute a promissory note secured by deed of trust encumbering the Property or Unit in favor of the APCHA for the amounts expended by the APCHA as specified herein, including future advances made for such purposes. The Owner may cure the default and satisfy its obligation to the APCHA under this subparagraph at any time prior to execution of a contract for sale, upon such reasonable terms as specified by the APCHA. Otherwise, Owner's indebtedness to the APCHA shall be satisfied from the Owner's proceeds at closing.
 - d. In addition, upon receipt of notice as provided in paragraphs 3a and 3b, the APCHA shall have the option, exercisable in the APCHA's sole discretion, to purchase Owner's Property or Unit for 95% of the Maximum Resale Price. If the APCHA desires to exercise said option, it shall give written notice thereof to the Owner within 45 days following the APCHA's receipt of the notice as provided in paragraphs 3a and 3b. If the APCHA timely exercises said option, the closing of the purchase of the Property or Unit shall occur within 45 days following the date of the APCHA's notice to the Owner of the exercise of said option.
4. It shall be a violation of the Agreement for the Owner to default in the payment of general or special assessments to the Homeowners' Association, and such person shall be subject to enforcement as provided herein. In addition, upon sale of a Property or Unit as to which the payment of such obligations is in default, the assessments shall be paid at closing by Owner.

ENFORCEMENT

5. Owner agrees to provide, upon request of APCHA, all documents and information necessary for APCHA to establish continued compliance with this Agreement and with the Guidelines as amended from time to time. Documents may include but are not limited to federal and state income tax returns, W2's, 1099's, bank and credit card statements, and invoices for utility payments. APCHA shall maintain the confidentiality of financial information as provided by law.
6. If the APCHA determines that sale of the Property or Unit is necessary because of breach of this Agreement, Owner shall immediately execute a standard Listing Contract on forms approved by the Colorado Real Estate Commission with the APCHA, providing for a 180-day listing period. At that time, the Owner shall deposit with the APCHA an amount equal to 1% of the estimated value of the Property or Unit. Unless the Notice of Violation is overturned on appeal, the appreciation of the Property or Unit will terminate from the date that the violation occurred (said date shall not necessarily be the same time the Notice of Violation was sent to the Owner). Unless the APCHA exercises its option to purchase the Unit in accordance with paragraph 9, the APCHA shall promptly advertise the Property or Unit for sale by competitive bid to Qualified Buyers. If a sales contract has not been executed within the initial 180-day period, Owner shall extend the listing period for an additional 180 days, provided such extension does not conflict with the statutory rights of any secured creditors. At the time of closing, the Owner shall pay to the APCHA an additional fee as stated in the Guidelines in effect at the time of sale.
 - a. The APCHA is entitled to require the Owner to accept the highest of any qualified bids that are equal to the lesser of (i) the Maximum Resale Price (as hereinafter defined), or (ii) an amount that has been adjusted and described in paragraph 6b. At no time can the sales price exceed the Maximum Resale Price established in this deed restriction.
 - b. If the Unit has not sold within 180 days of the listing agreement, the Owner will be bound by the following:
 - Owner must accept any pending offer, or offer made within 30 days of expiration of the 180-day period referred to above, from an APCHA-qualified buyer for at least 95% of the maximum sales price.
 - If no such offer is made within such period, the Owner must accept any valid offer from an APCHA-qualified buyer at or above 90% of the maximum sales price made within the next 30 day period.
 - For each additional 30 days that the home has not gone under contract, the bid price that must be accepted will be decreased by an additional 5% of the maximum sales price.

Listing and sale of the Property or Unit shall be subject to such listing, sales, and other fees and expenses as may be imposed by the APCHA from time to time as set forth in the Guidelines as amended from time to time.

AGREEMENT RUNS WITH THE LAND

7. This Agreement shall constitute covenants running with the Property and/or Unit, as a burden thereon, for the benefit of, and shall be specifically enforceable by the APCHA, the City Council for the City, the Board of County Commissioners for the County, and their respective successors and assigns, as applicable, by any appropriate legal action including but not limited to specific performance, injunction, reversion, or eviction of non-complying owners and/or occupants.

VOLUNTARY SALE

8. If an Owner desires to voluntarily sell the Property or Unit, the Owner shall execute a standard Listing Contract on forms approved by the Colorado Real Estate Commission with the APCHA providing for a 180-day listing period, or such other time as required by the Guidelines in effect at time of listing. The APCHA shall promptly advertise the Property or Unit for sale by competitive bid to Qualified Buyers. The listing and sale of the Property or Unit shall be subject to such listing, sales, and other fees and expenses as may be imposed by the APCHA from time to time as set forth in the Guidelines.

APCHA'S RIGHT TO ACQUISITION

9. Notwithstanding any provision herein to the contrary, the APCHA shall have the right, in its sole discretion, (a) to acquire any Property or Unit for resale thereof to a Qualified Buyer; (b) following its acquisition of any Property or Unit, to repair, replace, redevelop, remove, and maintain such Property or Unit prior to resale to a Qualified Buyer; and/or (c) amend this Deed Restriction Agreement following the acquisition. Upon purchase by APCHA, the price at which the Property or Unit is subsequently sold to a Qualified Buyer shall be the Maximum Resale Price as determined by the applicable Deed Restriction.

MAXIMUM RESALE PRICE

10. In no event shall the Property or Unit be sold for an amount (Maximum Resale Price) more than the lesser of:
- a. \$, plus an increase of 3% of such price per year to the date of Owner's notice of intent to sell (prorated at the rate of .25% for each whole month for any part of a year); or
 - b. an amount (based upon the Consumer Price Index, All Items, U.S. City Average, Urban Wage Earners and Clerical Workers (Revised), published by the U.S. Department of Labor, Bureau of Labor Statistics) calculated as follows: the Owner's purchase price divided by the Consumer Price Index published at the time of Owner's purchase stated on the Settlement Statement, multiplied by the Consumer Price Index current at the date of intent to sell. In no event shall the multiplier be less than one (1). For purposes of this Agreement, "date of intent to sell" shall be the date of execution of a listing contract when required by this agreement, or if a listing contract is not otherwise necessary, the date shall be determined to be the date upon which a requirement for the Owner to sell is first applicable.

NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE APCHA OR THE CITY THAT ON RESALE THE OWNER SHALL OBTAIN THE MAXIMUM RESALE PRICE.

11. a. Subject to the limitations of this section, for the purpose of determining the Maximum Resale Price in accordance with this section, the Owner may add to the amount specified in paragraph 10 the cost of approved and Permitted Capital Improvements (PCI), as set forth in Exhibit B attached hereto or otherwise allowed by the Guidelines as amended from time to time, in a total amount not to exceed \$, which is 10% of the maximum sales purchase price set forth in paragraph 10a. In calculating such amount, only those PCI's identified in Exhibit B hereto or otherwise allowed by the Guidelines shall qualify for inclusion. All such PCIs installed or constructed during Owner's ownership of the Property or Unit shall qualify and will be depreciated based on the Depreciation Schedule used by APCHA at the time of listing.
- b. PCIs shall not include any changes or additions to the Property or Unit made by the Owner during construction or two years thereafter, except in accordance with paragraph 11a. PCI shall not be included in the APCHA's listed purchase price, even if made or installed during original construction.
- c. To qualify as PCI, the Owner must furnish to the APCHA the following information with respect to the improvements that the Owner seeks to include in the calculation of Maximum Resale Price:
- (1) original or duplicate receipts to verify the actual costs expended by the Owner for PCI;
 - (2) Owner's affidavit verifying that receipts are valid and correct receipts tendered at the time of purchase;
 - (3) true and correct copies of any building permit or certificate of occupancy required to be issued by the Aspen/Pitkin County Building Departments with respect to the PCI.

In calculating costs under paragraphs 11 a to c, the Owner's actual out-of-pocket approved costs and expenses shall be eligible for inclusion. Such amount shall not include an amount attributable to Owner's "sweat equity" or to any appreciation in the value of the improvements.

All capital improvements will be depreciated. Certain capital improvements will not be allowed toward the 10% cap. Each capital improvement will depreciate per the depreciation schedule stated in an approved handbook. The current source is the *Marshall Swift Residential Handbook*. Any capital improvements associated with health and safety, energy efficiency, water conservation, and green building products will be exempt from the 10% capital improvement cap if approved by the APCHA prior to installation; however, such capital improvements shall be depreciated per the depreciation schedule stated in an approved handbook.

- d. For determining the Maximum Resale Price in accordance with this section, the Owner may also add to the amounts specified in paragraphs 10 and 11a the cost of any permanent improvements constructed or installed because of any requirement imposed by any governmental agency, if written certification is provided to the APCHA of both the applicable requirement and the information required by paragraph 11c(1) to (3).
- e. To obtain the Maximum Resale Price, the Owner must ensure that at the time of sale the Property or Unit meets the APCHA's generally applicable minimum standards for maintenance of the Property or Unit as determined by the APCHA in its discretion. This shall include requirements to clean the home, ensure that all fixtures are in working condition, repair damage to the Unit beyond normal wear and tear, and the other requirements as stated in the Exhibit C, Minimum Standards for Seller to Receive Full Value at Resale. If the Seller does not meet these requirements, the APCHA may require that Seller escrow at closing a reasonable amount of money to ensure compliance, or that the sale price of the Property or Unit be reduced accordingly.

GRIEVANCES

12. All disputes regarding the interpretation and enforcement of this Agreement shall be subject to the enforcement and grievance procedures set forth in the Guidelines as amended from time to time. All such disputes may be referred to an APCHA Hearing Officer.

CLOSING COSTS

13. Owner shall not permit any prospective buyer to assume any or all of the Owner's customary closing costs (including, but not limited to, title insurance, sales fee, proration of taxes, homeowner's dues, etc., as are customary in Aspen and Pitkin County) nor accept any other consideration that would cause an increase in the purchase price above the bid price to induce the Owner to sell to such prospective buyer.

MULTIPLE QUALIFIED BIDS

14. If one qualified bid is received equal to the Maximum Resale Price herein established, the Property or Unit shall be sold to such bidder at the Maximum Resale Price; and if Owner receives two or more such bids equal to the Maximum Resale Price, the Qualified Buyer shall be selected according to the priority for Sale Units set forth in the Guidelines; and if more than one such qualified bidder is of equal priority pursuant to the Guidelines, the Qualified Buyer shall be selected by lottery among the qualified bidders of the highest priority, whereupon the Property or Unit shall be sold to the winner of such lottery at the Maximum Resale Price. If the terms of the proposed purchase contract, other than price, as initially presented to the Owner, are unacceptable to the Owner, there shall be a mandatory negotiation period of three business days to allow the Owner and potential buyer to reach an agreement regarding said terms, including but not limited to the closing date and financing contingencies. If after the negotiation period is over the Owner and buyer have not reached an agreement, the next bidder's offer will be presented to the Owner for consideration and a three business day negotiating period will begin again. The Owner may reject all bids; however, the Owner is subject to the provisions in the Employee Housing Guidelines pertaining to the listing fee. Bids more than the Maximum Resale Price shall be rejected. If all bids are below the Maximum Resale Price, the Owner may accept the highest qualified bid. If all bids are below the Maximum Resale Price and two or more bids are for the same price, the Qualified Buyer shall be selected by lottery from among the highest qualified bidders.

NON-QUALIFIED TRANSFEREES

15. If title to the Property or a Unit vests by descent in, or is otherwise acquired by, any individual and/or entity who is not a Qualified Buyer as that term is defined herein (Non-Qualified Transferee(s)), the Property or Unit shall immediately be listed for sale as provided in paragraph 8 (including the payment of the specified fee to the APCHA), and the highest bid by a Qualified Buyer, for not less than 95% of the Maximum Resale Price or the appraised market value, whichever is less, shall be accepted; if all bids are below 95% of the Maximum Resale Price or the appraised market value, the Property or Unit shall continue to be listed for sale until a bid in accordance with this section is made, which bid must be accepted. The cost of the appraisal shall be paid by the Non-Qualified Transferee(s).
 - a. Non-Qualified Transferee(s) shall join in any sale, conveyance, or transfer of the Property or Unit to a Qualified Buyer and shall execute all documents necessary to do so.
 - b. Non-Qualified Transferee(s) agree not to: (1) occupy the Property or Unit; (2) rent all or any part of the Property or Unit, except in strict compliance with paragraph 15; (3) engage in any other business activity on or in the Property or Unit; (4) sell or otherwise transfer the Property or Unit except in accordance with this Agreement and the Employee Housing Guidelines; or (5) sell or otherwise transfer the Property or Unit for use in a trade or business.
 - c. The APCHA, the City, the County, or their respective successors, as applicable, shall have the right and option to purchase the Property or Unit, exercisable within a period of 15 calendar days after receipt of any sales offer submitted to the APCHA by a Non-Qualified Transferee(s), and if exercising their right and option, shall purchase the Property or Unit from the Non-Qualified Transferee(s) for a price of 95% of the Maximum Resale Price, or the appraised market value, whichever is less. The offer to purchase shall be made by the Non-Qualified Transferee within 15 days of acquisition of the Property or Unit.
 - d. Where the provisions of this paragraph 15 apply, the APCHA may require the Owner to rent the Property or Unit in accordance with the provisions of paragraph 19.

OWNER RESIDENCE, EMPLOYMENT, AND CONTINUING COMPLIANCE

16. Each Property or Unit shall be used only as the sole and exclusive place of residence of its Owner.
17. If an Owner changes place of residence or ceases to use the Property or Unit as his or her sole and exclusive place of residence, ceases to be a full-time employee in accordance with the Guidelines as amended from time to time, or otherwise ceases to comply as a Qualified Buyer with the Guidelines as amended from time to time, or this Agreement, the Property or Unit must be offered for sale pursuant to the provisions of paragraph 6. An Owner shall be deemed to have changed his or her place of residence by becoming a resident elsewhere or accepting employment outside Pitkin County, or residing in the Property or Unit for fewer than nine months per calendar year without the express written approval of the APCHA pursuant to a leave of absence, or by ceasing to be a full-time employee as required by the Guidelines as amended from time to time. Where the provisions of this paragraph 17 apply, the APCHA may require the Owner to rent the Property or Unit in accordance with the provisions of paragraph 19 pending a sale of the property.
18. It is a violation of this Agreement for an Owner to own directly or indirectly, through a legal entity or otherwise, any interest alone or in conjunction with others in any residential property within the Ownership Exclusion Zone. If at any time an Owner acquires such an interest, the Owner shall immediately list said other property or unit for sale and sell his or her interest in such property at fair market value to like units or properties in the area in which the property or dwelling unit(s) are located. If said other property or unit has not been sold by Owner within 180 days of closing on this property, Owner shall immediately list this Property or Unit for sale pursuant to the provisions of paragraph 6. Should the Owner not receive a full-price bid, said Owner must accept the first reasonable offer for said Property or Unit as deemed appropriate by the APCHA.

RENTAL

19. Owner may not, except with prior written approval of the APCHA, and subject to APCHA's conditions of approval, rent the Property or Unit for any period. Prior to occupancy, each tenant must be approved by the Homeowners' Association, if applicable, and the APCHA in accordance with employment as stated in the Guidelines, as well as non-ownership of residential property within the Ownership Exclusion Zone, established by the Guidelines. The APCHA shall not approve any rental if such rental is being made by Owner to use the Property or Unit as an income producing asset, except as provided below, and shall not approve a lease with a rental term more than 12 months. A signed copy of the lease must be provided to the APCHA prior to occupancy by each tenant. Any such lease approved by the APCHA shall show the length of the lease and the monthly rent. The monthly rent cannot exceed the Owner's costs, which include the monthly expenses for the cost of principal and interest payments, taxes, property insurance, condominium or homeowner's assessments, utilities remaining in Owner's name, plus an additional amount as stated in the Guidelines as amended from time to time, and a reasonable (refundable) security deposit. Requirements of this paragraph shall not preclude the Owner from sharing occupancy of the Property or Unit with qualified non-Owners as determined by APCHA on a rental basis provided Owner continues to meet the obligations contained in this Agreement, including paragraph 15. All roommates charged rent by the Owner are required to obtain approval by the APCHA prior to occupancy.
20. IN NO EVENT SHALL THE OWNER CREATE AN ADDITIONAL DWELLING UNIT, AS DEFINED IN THE PITKIN COUNTY OR CITY OF ASPEN LAND USE CODES, IN OR ON THE PROPERTY OR UNIT.
21. NOTHING HEREIN SHALL BE CONSTRUED TO REQUIRE THE APCHA TO PROTECT OR INDEMNIFY THE OWNER AGAINST ANY LOSSES ATTRIBUTABLE TO THE RENTAL, INCLUDING (NOT BY WAY OF LIMITATION) NON-PAYMENT OF RENT OR DAMAGE TO THE PREMISES; NOR TO REQUIRE THE APCHA TO OBTAIN A QUALIFIED TENANT FOR THE OWNER IF NONE IS FOUND BY THE OWNER.

COMPLIANCE REVIEW AND REMEDIES FOR BREACH

22. All existing and potential Owners shall promptly provide to the APCHA all information the APCHA deems reasonably necessary at any time to verify compliance with this Agreement. The APCHA shall maintain the confidentiality of any financial data provided by any existing or potential Owner, subject to the requirements of the Colorado Open Records Act, CRS §§ 24-72-201 et seq., and except for such disclosures as are necessary with respect to any litigation, enforcement, or other legal proceedings. If the APCHA has reasonable cause to believe the Owner is violating the provisions of this Agreement, the APCHA, by its authorized representative, may inspect the Property or Unit between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, after providing the Owner with no less than 24 hours' written notice.

23. If a violation or potential violation of this Agreement is discovered, the APCHA, through its employees or agents, shall send a notice of violation to the Owner describing the nature of the violation and, at the discretion of the APCHA, allowing the Owner 15 days to cure. The notice shall state that the Owner may request a hearing before the APCHA Hearing Officer, or if there is no Hearing Officer, the Board of Directors within 15 days to dispute the merits of the allegations. If no hearing is requested and the violation is not cured within any 15 day period granted by APCHA, the violation shall be considered final and the Owner shall immediately list the Property or Unit for sale in accordance with this Agreement. The failure to request a hearing shall constitute the failure to exhaust administrative remedies for judicial review. If a hearing is held before the APCHA Hearing Officer, the decision of the APCHA Hearing Officer, based on the record of such hearing, may be appealed to the APCHA Board within 15 days of the Hearing Officer's final decision for determining if a violation has occurred; and the APCHA Hearing Officer or the APCHA Board shall have discretion to determine the appropriate action to be taken to either remedy the violation or to require the Owner to list the Property or Unit for sale in accordance with this Agreement. For determining the Maximum Resale Price of the Property or Unit, unless the Notice of Violation is overturned on appeal, appreciation shall terminate from the date that the violation occurred (the date shall not necessarily be the same time the Notice of Violation was sent to the Owner) until the violation is cured or until the Property or Unit is sold, whichever is applicable. If there is no APCHA Hearing Officer, the provisions of this paragraph shall apply to the APCHA Board.
24. There is hereby reserved to the parties hereto all remedies provided by law for breach of this Agreement or any of its terms. In the event of litigation with respect to any or all provisions of this Agreement, the prevailing party shall be awarded costs and reasonable attorney' fees.
25. If the Property or Unit is sold and/or conveyed without compliance herewith, such sale and/or conveyance shall be wholly null and void and shall confer no title whatsoever upon the purported buyer, and the transaction shall be rescinded. Each conveyance of the Property or Unit, for all purposes, shall be deemed to include and incorporate by this reference, the covenants herein contained, even without reference therein to this Agreement. The Owner shall be liable for all APCHA costs and reasonable attorney fees incurred in setting aside any such transaction.
26. If the Owner fails to cure any breach, the APCHA may resort to all available legal action, including, but not limited to, specific performance of this Agreement or a mandatory injunction requiring sale of the Property or Unit by Owner as specified in paragraphs 3, 15, 17, and 18. The costs of such sale, including reasonable attorney fees, shall be taxed against the proceeds of the sale, with the balance paid to the Owner.
27. If there is a breach of any of the terms or conditions contained herein by the Owner, his or her heirs, successors or assigns, the APCHA's initial listed purchase price of the Property or Unit as set forth in paragraph 10a shall, upon the date of such breach as determined by the APCHA, automatically cease to increase as set out in paragraph 10, and shall remain fixed until the date of cure of said breach. Such Owners are prohibited from recouping the appreciation lost during the period of non-compliance.

FORECLOSURE

28. a. If any Property or Unit is sold as a foreclosure sale or otherwise acquired by any person or entity in lieu of foreclosure, the APCHA and the Board, as the designee of the APCHA, shall have the option to acquire such Property or Unit within 30 days after (1) the issuance of a public trustee's deed to the purchaser, or (2) receipt by the APCHA of written notice from such person or entity of the acquisition of such Lot in lieu of foreclosure, as applicable, for an option price not to exceed (i) if a foreclosure occurs, the redemption price on the last day of all statutory redemption periods and any additional reasonable costs incurred by the holder during the option period that are directly related to the foreclosure; or (ii) if there is a transfer in lieu of foreclosure, the amount paid, or the amount of debt forgiven, by the transferee plus the reasonable costs incurred by the transferee with respect to its acquisition of such Property or Unit. Notwithstanding any provision herein to the contrary, except for persons or entities having a valid lien on a Property or Unit, only Qualified Buyers may acquire an interest in a Property or Unit at a foreclosure sale or in lieu of foreclosure. If any person or entity having a lien on a Property or Unit is not a Qualified Buyer and acquires an interest in such Property or Unit in a foreclosure sale or in lieu of foreclosure, the provisions of paragraph 15 shall apply. It is the APCHA's intent that the terms and provisions of this Agreement shall remain in full force and effect with respect to the Property and all Units until modified, amended, or terminated in accordance with paragraph 39.
- b. If the APCHA exercises the option described above, the APCHA may sell the Property or Unit to a Qualified Buyer as that term is defined herein, or rent the Property or Unit to qualified tenants who meet the income, occupancy, and all other qualifications established by the APCHA in its Guidelines until a sale to a Qualified Buyer is effected.

- c. Notwithstanding the foregoing, if there is a foreclosure by the holder of the first deed of trust on such Property or Unit, if the holder of such deed of trust is the grantee under the public trustee's deed and APCHA does not exercise its option to purchase as provided in this paragraph, then the APCHA agrees to release the Property or Unit from the requirements of this Deed Restriction.

GENERAL PROVISIONS

29. **Notices.** Any notice, consent, or approval that is required to be given hereunder shall be given by certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the party if prior written notice of the change of address has been given to the other parties to this Agreement. The notices, consents, and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To APCHA: Aspen/Pitkin County Housing Authority
210 E. Hyman Avenue, Suite 202
Aspen, Colorado 81611

To Owner/Declarant: Owner/Declarant Name
Owner/Declarant Address

30. **Exhibits.** Exhibits A, B, and C are incorporated herein and made a part hereof.
31. **Severability.** Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such a manner as to be valid under applicable law; but if any provision of any of the foregoing shall be invalid or prohibited under applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of such document.
32. **Choice of Law.** This Agreement and each related document are to be governed and construed in accordance with the laws of the State of Colorado. Jurisdiction for any action arising under this Agreement shall be in Pitkin County, Colorado.
33. **Successors.** Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors, and assigns of the parties.
34. **Section Headings.** Paragraph or section headings within this Agreement are inserted solely for convenience of reference, and are not intended to, and shall not govern, limit, or aid in the construction of any terms or provisions contained herein.
35. **Waiver.** No claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the parties to this Agreement. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition, if such waiver is in writing.
36. **Gender and Number.** Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.
37. **Personal Liability.** The Owner agrees that he or she shall be personally liable for any of the transactions contemplated herein.
38. **Further Actions.** The parties to this Agreement agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered in connection herewith.
39. **Modifications.** The parties to this Agreement agree that any modifications of this Agreement shall be effective only when made by writings signed by both parties and recorded with the Clerk and Recorder of Pitkin County, Colorado. Notwithstanding the foregoing, the APCHA reserves the right to amend this Agreement unilaterally where deemed necessary to effectuate the purpose and intent of this Agreement, and where such unilateral action does not materially impair the Owner's rights under this Agreement.
40. **Mortgagee Right to Cure.** Nothing herein shall be deemed to impair any right of a mortgagee of a Property or Unit from curing any default by an Owner of his or her financial obligations with respect to such Property or Unit.

EXHIBIT A

Legal Description:

EXHIBIT B

Permitted Capital Improvements

1. The term "Permitted Capital Improvement" as used in the Agreement shall only include:
 - a. improvements or fixtures erected, installed, or attached as permanent, functional, non-decorative improvements to real property, excluding repair, replacement, and/or maintenance improvements;
 - b. improvements for energy efficiency items and water conservation;
 - c. improvements for the benefit of seniors and/or handicapped persons;
 - d. improvements for health and safety protection devices;
 - e. improvements to add and/or finish permanent/fixed storage space;
 - f. improvements to finish unfinished space;
 - g. permanent types of landscaping, for example, adding irrigation system or trees (perennial-type flora may be allowed, but not guaranteed);
 - h. the cost of adding decks and balconies, and any extension thereto; and/or
 - i. improvements associated with green building products.
2. Permitted Capital Improvements as used in this Agreement shall NOT include the following:
 - a. jacuzzis, saunas, steam showers, and other similar items;
 - b. upgrades or addition of decorative items, including lights, window coverings, and other similar items;
 - c. upgrades of appliances, plumbing and mechanical fixtures, carpets and other similar items included as part of the original construction of a unit, and/or improvements required to repair and maintain existing fixtures, appliances, plumbing and mechanical fixtures, painting, and other similar items, unless replacement is energy efficient or for safety and health reasons; and/or
 - d. landscaping that is not permanent, for example, flowers.
3. **All Permitted Capital Improvement items and costs shall be approved by APCA staff prior to being added to the Maximum Resale Price as defined herein. APCA recommends that you obtain approval before doing any work.** To get credit for an improvement where a building permit is required, the improvement will not be counted unless a Letter of Completion was obtained by the Building Department.
4. The Permitted Capital Improvements shown hereon shall be subject to such additions, deletions, and modifications as may be set forth in the Guidelines as amended from from time to time; provided that if any improvement is made at a time when it would be deemed a Permitted Capital Improvement hereunder or under the Guidelines, such improvement shall be deemed a Permitted Capital Improvement at all times notwithstanding any modification of the Guidelines; however, ALL permitted capital improvements will be depreciated as based on a third source as stipulated in the Guidelines.

EXHIBIT C

Minimum Standards for Seller to Receive Full Value at Resale

- Clean unit
- Carpets steam-cleaned two or three days prior to closing
- Major scratches, holes, and burn marks repaired in hardwood floors, linoleum, tile, counter tops, etc.
- No broken windows
- All screens in windows (if screens were originally provided)
- All doors will be in working order with no holes
- All locks on doors will work
- All keys will be provided (e.g., door, mail box, garage)
- All mechanical systems will be in working order

- Walls paint-ready
- Normal wear and tear on carpet; if carpet has holes, stains, etc., the carpet and padding shall be replaced or escrow funds at current market value per square foot for a comparable product shall be held at the time of closing to be used by the new buyer
- No leaks from plumbing fixtures
- No roof leaks
- Any safety hazard remedied prior to closing, excluding radon (not required in State of Colorado)
- All light fixtures shall be in working order

Definitions

Clean Unit: All rooms will be cleaned as follows:

- **Kitchen**
 - ▷ Range: Inner and outer services
 - ▷ Range hood and exhaust fan
 - ▷ Refrigerator and Freezer: Inner and outer surfaces of refrigerator and freezer will be clean, and freezer will be defrosted
 - ▷ Cabinets and Countertops: Exterior and interior surfaces of cabinets and drawers will be clean, and door and drawer handles, if provided, will be clean and in place.
 - ▷ Sink and garbage disposal: Sink and plumbing fixtures will be clean, and if a garbage disposal is provided, it must be in working order
 - ▷ Dishwasher: If provided, it must be in working order and inner and outer surfaces will be clean
- **Blinds, Windows, Screens**
 - ▷ Mini-blinds, venetian blinds, vertical blinds, and pull shades will be clean
 - ▷ All window surfaces inside the unit will be clean
 - ▷ If provided, screens will be clean and in place with no holes or tears
- **Closets**, including floors, walls, hanger rod, shelves, and doors, will be clean
- **Light Fixtures** will be clean and will have functioning bulbs/florescent tubes
- **Bathrooms**
 - ▷ Bathtub, shower walls, and sinks will be clean
 - ▷ Water closets, toilet bowls, and toilet seats will be clean, and broken or peeling toilet seats will be replaced
 - ▷ All tile and grout will be clean
 - ▷ Mirrors and medicine cabinets will be clean inside and out
 - ▷ Shelves and/or other cabinetry will be clean inside and out
- **Walls, Ceilings, Painted Doors and Baseboards:** Painted surfaces must be cleaned with care to ensure the surface is clean without damaging the paint.
- **Floors:** Floor cleaning includes sweeping and mopping and includes, when necessary, stripping, waxing, and buffing. Types of floor surfaces include wood, wood parquet tiles, linoleum, asphalt tile, vinyl tile, mosaic tile, concrete, and carpet. All carpets will be cleaned at least two days prior to closing.
- **Interior Storage/Utility Rooms:** Storage/utility rooms will be clean. Properly cleaned storage/utility rooms will be free from odors, removable stains, grease marks, or accumulations.

Safety Hazard: Any item that causes a safety hazard will be fixed. This includes, but is not limited to, exposed electrical wiring and ventilation for gas hot water systems. If a radon test shows higher than normal levels, there is not a requirement to mitigate under Colorado law.

Walls Paint-Ready: All holes will be patched; all posters, pictures, etc., will be removed from all walls; all nails, tacks, tape, hardware used to hang items, etc., will be removed from all walls; and all walls will be clean and ready for the new buyer to paint. If wallpaper has been placed on the wall and is in good condition, the wallpaper can remain; if the wallpaper is peeling, it must be removed.

Windows: If a window is broken, including the locking mechanism, the window will be replaced and/or the locking mechanism repaired.